

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ST. ANNES DEVELOPMENT CO., LLC, *et al.*,

Plaintiffs,

ORDER

CV 11-3323 (ADS)(ARL)

-against-

NEIL TRABICH, *et al.*,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court are non parties Jay E. Russ' and Russ & Russ' (collectively "Russ & Russ") applications for an order staying their response to a subpoena served upon them on December 26, 2012 for the production of documents until such time as Magistrate Judge A. Kathleen Tomlinson has ruled on pending applications concerning the validity of the attorney-client and work product privilege waivers in a related action. In the alternative, Russ & Russ move to quash the subpoena pursuant to Fed. R. Civ. P. 45 on the basis that it seeks documents which remain protected by attorney-client and work product privilege. Judgment creditors Saint Annes Development Company and Aaron Young (collectively "SADC and Young") oppose the applications contending principally that defendants Neil Trabich and Terry Trabich waived their privileges, and that in any event, the motion pending before Judge Tomlinson is relevant to the claims and defenses in that action. The court disagrees.

The subpoena in the instant matter seeks from Russ & Russ the production of the following potentially privileged documents:

1. All communications with Neal Trabich, Terry Trabich, and/or Global Golf, Inc. concerning any legal matter involving Aaron Young, Saint Annes Development Company, LLC, AP Links, LLC and/or Peter Rubin.
2. All communications with any attorney from Zuckerman Spaeder, LLP concerning any legal matter involving Neal Trabich, Terry Trabich, and/or Global Golf, Inc.
3. All communications with any attorney from Adelberg, Rudow, Dorf & Hendler, LLC concerning Neal Trabich, Terry Trabich, and/or Global Golf, Inc.
4. All documents concerning Your representation of Neal Trabich, Terry Trabich, and/or Global Golf, Inc. concerning any legal matter involving Aaron Young, Saint Annes Development Company, LLC, AP Links, LLC, and/or Peter Rubin.

In the related action, *AP Links, LLC et al v. Jay Edmund Russ et al.*, LLC, No. 09-CV-5437 (TCP)(AKT), plaintiffs AP Links, LLC and SADC ("plaintiffs") commenced an action against Russ & Russ alleging breach of fiduciary duty and intentional interference with a contract. In that action, plaintiffs moved to compel certain document requests, Russ & Russ objected based on privilege, and Judge Tomlinson denied the motion. Thereafter plaintiffs moved for reconsideration. On December 19, 2012, Neil Trabich (individually and on behalf of

Global Golf, Inc.) and Terry Trabich executed waivers in which they state they are waiving the attorney client and work product privileges in connection with legal matters involving Aaron Young, Peter Rubin, SADC and AP Links, LLC. On December 20, 2012 plaintiffs supplemented their motion for reconsideration in light of the waivers and sought an extension of discovery to reopen the deposition of Mr. Russ given the execution of waivers. Russ & Russ opposed the application and requested a hearing or in the alternative an opportunity to depose Neil and Terry Trabich (as well as Mr. Young and Mr. Rubin) regarding the execution of the waivers. These applications are pending before Judge Tomlinson and seek her consideration of the validity of the waivers and the circumstances under which they were executed.

Inasmuch as a ruling on the applications pending before Judge Tomlinson in the related action may impact the undersigned's consideration of Russ & Russ' motion to quash the subpoena seeking the production of potentially privileged documents, Russ & Russ' application to stay their time to respond to the subpoena until such time as Judge Tomlinson has ruled on the validity of the privilege waivers is granted.

Dated: Central Islip, New York
February 12, 2013

SO ORDERED:

_____/s_____
ARLENE ROSARIO LINDSAY
United States Magistrate Judge